

HAMPTON ZONING BOARD OF ADJUSTMENT

MINUTES – Draft

March 20, 2014

Members Present

Bryan Provencal, Chairman

Ed St. Pierre, Clerk

William O'Brien

Tom McGuirk

Norman Collins

Matt Shaw (Alternate)

Chairman Provencal called the meeting to order at 7 pm.

The Pledge of Allegiance was said.

Board members were introduced.

Reorganization of Board

Moved by Mr. St. Pierre, seconded by Mr. McGuirk to nominate Bryan Provencal as Chairman.

Vote: 4 yes, 1 abstention (Mr. Provencal)

Chairman Provencal asked for a nomination for Vice Chairman.

Moved by Mr. McGuirk, seconded by Chairman Provencal to nominate Mr. O'Brien as Vice Chairman.

Vote: 4 yes, 1 abstention (Mr. O'Brien)

Chairman asked for a motion for Clerk.

Moved by Mr. McGuirk, seconded by Mr. St. Pierre to nominate Ms. Collins as Clerk.

Vote: 4 yes, 1 abstention (Ms. Collins)

PETITION SESSION

At this time Mr. McGuirk stepped down from the Board and Alternate Matt Shaw stepped up to the Board.

08-14....The petition of New Cingular Wireless PCS, LLC(AT&T) for property located at 83 Ocean Boulevard seeking relief from Article XVI, Section 16.2 to propose wireless communications facility to be located on and within the existing building on the property, including without limitation up to twelve (12) multi-band panel antennas (four per sector) mounted behind radio frequency compatible material, with associated remote radio heads (RRHs), surge arrestors, cables and fiber; radio communications and electronic equipment located within a proposed equipment room within the building, fiber-optic trunks, DC power trunks and RET lines, up to three (3) GPS antennas located attached to the existing parapet air conditioning condenser located on the roof of the building, gas generator and related facilities on a concrete pad for back-up power in the event of an emergency and related underground gas line;

stockade fence surrounding the proposed generator, and proposed underground electronic and telephone utilities and related conduits. All as more fully depicted on the plans submitted herewith. This property is located on Map 290, Lot 146 and in the BS Zone.

Questions from the Board

Mr. St. Pierre informed the Attorney present tonight that he has a background in telecommunications so probably has the most knowledge on the topic of all the Board Members. However he is an employee of Verizon so if the Attorney is uncomfortable with that he will step down. The Attorney felt that it was best for him to step down.

Mr. O'Brien asked if the Attorney is familiar with the current and the new law New Hampshire just passed. It is his understanding that the law takes a very liberal interpretation of where cell towers can go, who can control them and things of that nature. Although he has not read the law it is his understanding that this Board may not have any jurisdiction in this matter. The Attorney addressed the statute he is referring to and there is an interpretation to be made. If the Board is to decide that it is not under their jurisdiction then they would go to the Building Department for a permit.

Chairman Provencal stated it is his understanding that this is the more polite way to go about this the other thing to do would be to go to court.

Mr. St. Pierre thinks that since it is going to be attached to a building this Board needs to at least listen to the proposal.

Mr. Provencal asked if he would like to continue with a Board of four or wait for the Alternate to arrive. It was decided to hold this petition until the end of meeting.

09-14...The petition of Deane Rykerson, AIA Rykerson Architecture for property located at 150 High Street seeking relief from Article 2.7 multi-family in the POR District, 1.3 and Article VIII, 8.1.3, 8.2.1, 8.2.3, 8.2.4 and 8.2.6 to convert vacant property to multi-family residential use with minimal exterior alterations. Interior of structure is to be altered for residential use. This property is located on Map 161, Lot 10 in the POR Zone.

Mr. Rykerson is the Architect representing the owners of 150 High Street and they would like to build a multi-family property. The owner of the property was also present. Mr. Rykerson discussed the state of the current property and how it has no use. Mr. Rykerson went through the five criteria and said they felt they had been met.

Questions from the Board

Mr. St. Pierre asked what the zoning of this area was previously and it was RA.

Mr. O'Brien asked Mr. McGuirk about them asking for relief from 8.1.3 which is below ground and wonders if this is a building code that you cannot have the apartment below ground. Mr. McGuirk explained that this can be done and provided details on why.

Ms. Collins asked about them asking for relief from 8.2.1 and wonders if the rec space is going to meet the criteria. Mr. Rykerson showed the detail of the rec space and that he can actually remove this request for relief since they will be providing ample space.

Comments from the Audience

Deb Covert, 6 George Ave, expressed concerns that abutters have with the change of use. She discussed the many uses of the building over time and how it has always been for day use. They would like to see it used in the same manner and possibly as a community center. If this is to pass they have concerns with lighting, do not want to have a dumpster in sight and some kind of a buffer such as trees. Mr. McGuirk stated that all of their concerns are issues for the Planning Board but that all of these things are taken into consideration.

Betty Fay Benjamin, 8 George Ave, expressed the same concerns as Ms. Covert above. She also discussed how her lot goes a little deeper and problems she has encountered in the past with buffer area. She questioned if the units will be for rent or purchase and it is intended for condo/townhouse for purchase. However this is out of the realm of this Board.

Back to the Board

Mr. McGuirk commented that he does not disagree with them that a rec/community center would be great but the property owner has rights to do with the property as they wish.

Mr. St. Pierre asked for clarification on map in regards to the RA and RB line. Mr. Rykerson made the same mistake but after talking to the Code Enforcement Officer it is actually POR. Mr. St. Pierre specifically looked at the Zoning Ordinance Book and 2.7 explicitly prohibits multi-family. Mr. St. Pierre addressed granting relief from the 8's and how it is hard to address in the beach zone he is not ready to give up on the spirit and intent of what those were put in place for in the Town. The biggest issue is with the word "prohibits" in 2.7 and in the 8's. He is not sure if he can vote for this and expressed why. On the face of things he thinks this property would work on this lot but he has to look at these Zoning Ordinances.

Mr. Rykerson commented that this is why there is a variance process since rules are made but they do not always work all the time.

Mr. McGuirk explained when and how the POR came into place in relation to Bean Insurance.

The property owner commented that she is willing to look at it being a community center. Mr. Griffin commented on how this building was looked at as the location for a community center. The property owner commented on the price has dropped to \$629,000 and Mr. Griffin will bring this information back to the Board of Selectmen.

Mr. St. Pierre reiterated that his specific problem is ordinances stating no multi-family units.

Ms. Collins asked if abutters were notified when this changed to POR. She discussed the non-conforming buildings and the only way to have them be in conformance is to seek these reliefs. Ms. Collins does not understand why the Town is not chopping at the bit to do something with this since there are so many possibilities.

Mr. O'Brien stated that they are bringing up points he did not think about. When he looked at the map he read RB. If they were only asking for relief from 2.7 he guesses he would be liberal enough to allow it to happen.

Chairman Provencal commented that with the number of units and excessive amount of parking being requested it is the complete opposite of what usually comes before them. They would

normally see 20 units and someone asking for parking relief. He thinks this along with other things they spoke of tonight would be good for the Town.

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to grant Petition 09-14 with the exception of 8.2.1 and that an appropriate buffer be in place on the East and North side of the property.

Ms. Collins asked about ordinance just passed in regards to impervious space and wonders if this falls in the 65% on POR. Mr. McGuirk stated that it does not and explained why.

Chairman Provencal asked the Board if they felt the five criteria had been met. Chairman Provencal, Mr. McGuirk, Mr. O'Brien and Ms. Collins said that they had. Mr. St. Pierre said he would abstain.

Vote: 4 yes, 0 no, 1 abstention (St. Pierre). Motion passed.

10-14...The petition of Big Bernie Property Management, LLC for property located at 73 Ocean Boulevard seeking relief from Article 4.5.2 to extend the second level deck toward the property lines, Where the extensions on the north and south sides and the deck supports would encroach onto the side setbacks to the property lines. This property is located on Map 293, Lot 61 in the BS Zone.

At this time Mr. McGuirk, Mr. St. Pierre and Chairman Provencal stepped down and Alternates Matt Shaw and Rick Griffin stepped up to the Board.

Mr. O'Brien commented on the rule they have in their rules and procedures that they must have 3 normal Board Members present. He also commented on the fact that they do not have a 5 member Board right now.

Attorney Saari commented that there is also an abutters Attorney present tonight. He and Mr. Fleury do not have problem going forward with this. However it could be a problem if this is to go to court.

Attorney Springer representing an abutter came forward. Mr. O'Brien asked if they have any objection to the make-up of the Board. Attorney Springer stated that they have no objection to the make-up of the Board.

Attorney Saari explained that they are asking for one variance. He discussed the last time they were before the Board. Tonight they are only asking for side setback relief. The previous application was withdrawn and was much more extensive. Attorney Saari discussed in detail the amount of work that has been done. The other businesses in this area that have come before the Board for this same variance and it has been granted. Mr. Fleury would like to make a little more room for tables in this area. The location and width of building creates a problem and why it is important to expand this seating area. How the weather really affects Mr. Fleury's business. The Board is being asked to decide whether what Mr. Fleury is proposing is so harmful that it outweighs the inherent rights that property owners have to make reasonable use of their property. The Board has two guidelines, the five criteria and the knowledge and experience they each have. There are three abutters one from the south (Board should have an email in support of the project from him), abutter to west is not impacted from this and the northerly abutter here tonight being represented by Attorney Springer. This abutter is forty feet away, has balconies the length of the building and is separated by a noisy road. This abutter will express her concerns which Attorney Saari addressed prior to abutter coming forward. He also explained that the building has been inspected by Mr. Schultz. He also discussed the noise ordinance that was just passed.

Questions from Board

Mr. Shaw referred to the diagram and questioned if area in back is going to remain within the setbacks. Mr. Fleury pointed out that this is an addition but is not related to this variance since it is within the setback limits.

Ms. Collins confirmed with Mr. Fleury that they are not asking for the same relief as last time.

Comments from the Audience

Attorney Springer is here tonight representing Houle Realty Trust which owns and operates Harris Sea Ranch Motel which is a direct abutter. He presented the Board with the new application of objection. He would like to provide some history and responses to comments made by Attorney Saari. Attorney Springer spoke about the in-conformities with the building and provided the Board with copies of the plans for this property. These plans show that the building is not conforming and therefore expansion is prohibited in his opinion. It appears that the intent is to increase the number of tables if you look at drawings. Attorney Springer pointed out that Attorney Saari did not address the five criteria in his presentation. Attorney Springer went through and focused on a few of the criteria in detail. For all of the reasons he just provided in regards to the criteria they hope the variance will be denied.

Attorney Saari responded that he is not sure where Attorney Springer got the plans but they appear to be from last July. Attorney Saari referred to the ordinance in regards to expansion. In regards to comments about money he referenced the fact that the prior owner did not make it. He pointed out the non-conformities that Mr. Fleury has fixed with this property. He also discussed the purpose of side setbacks.

Back to the Board

Mr. Shaw asked about the little section on the side that used to be an entrance to the downstairs. Chairman Provencal commented that it is considered landscaping.

Ms. Collins asked if the last building/business was non-conforming and Attorney Saari believes this to be true.

Attorney Springer stated if the prior building was non-conforming and new structure is built in its place it can still be non-conforming. He explained why he feels this is true.

Mr. Provencal commented that the new building was not built in the same footprint as the old building. This building is completely conforming in order for it to be built.

Mr. O'Brien asked Attorney Saari if the changes being made bring in 4.8 which was just passed by the voters. Attorney Saari does not think it comes into play since they are not increasing the surface area. Mr. O'Brien brought up the variances Attorney Saari talked about that were granted for Sea Ketch and Boardwalk. Mr. O'Brien pointed out that they kept Stacey Jane's at the 4 foot setback. Mr. O'Brien's dilemma is that the problem appears to be with too many tables why not just reduce the number of tables.

Mr. Fleury commented on the number of engineers that he had look at this project. The problems they face with fire codes.

Ms. Collins confirmed with Mr. Fleury that the tables are not steel and can be moved. He was commenting on the steel used in building the structure. Mr. Fleury commented that back in 2012 it went out to zero and then some.

Mr. O'Brien thinks this is a self-inflicted hardship. Mr. Fleury disagrees and shared all the times he has attempted to come before the Board.

Mr. Griffin is concerned since others have been approved for similar like the Boardwalk and Sea Ketch. Mr. O'Brien explained that they have not been approved for the same thing and provided details on what was done at each of these locations.

Mr. Shaw is kind of hung up on the hardship issue.

Mr. O'Brien is against it being on the property line asked if they would be in favor of going within two feet. Mr. O'Brien commented that the applicant has agreed to the 2 feet and asked what the pleasure of the Board is. Mr. Shaw thinks two feet on each side makes a difference. Ms. Collins agrees.

Moved by Ms. Collins, seconded by Mr. Griffin, to grant the Petition 10-14 to allow 4.5.2 setback relief to 2 feet on both the north and south side.

Mr. O'Brien asked the Board if the five criteria had been met. All members agreed that they had.

Vote: 4 yes, 0 no. Motion passed unanimously.

08-14... The petition of New Cingular Wireless PCS, LLC(AT&T) for property located at 83 Ocean Boulevard continued from beginning of meeting.

The Attorney representing AT&T addressed the concerns of Mr. O'Brien in regards to the interpretation of the statute. He has conferred with his client about that and they are asking for a continuance for April. He expressed apologies to all the people present who have been waiting.

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to allow Petition 08-14 to be postponed until next month it will be first on the agenda.

Mr. O'Brien assuming they are allowed to do this what happens to Rte. 101 cell tower. Attorney stated that those would stay. Mr. O'Brien asked about cell service in the North Beach area. He also commented on possibility of purchasing a condo and did not realize that if you purchased a condo you did not own the in common areas such as roof and parking lot.

Attorney Ells stated that the condominium declaration will define the common areas. He talked in detail about the three different types of condo ownership. He also talked about the Sea Spray structure in detail.

Mr. O'Brien asked about the location of the generator and being located in green space. Attorney Ells believes the location is to be against the building.

Mr. Shaw asked if the condo owners had to vote on this and Attorney Ells confirmed this is true and it was voted on in April or May.

BUSINESS SESSION

Approval of Minutes

The Board deferred the approval of minutes until their next meeting.

Adjournment

There being no further business, the meeting was adjourned at 9:40 pm.